

Thursday, February 01, 2007

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**Zoning and Neighborhood Plan Amendments  
(Public Hearings and Possible Action)  
RECOMMENDATION FOR COUNCIL ACTION**

**ITEM No. 57**

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**Subject:** C14-72-015(RCA) - 1517 E. Anderson Ln - Conduct a public hearing and approve a restrictive covenant amendment for the property located at 1517 E Anderson Lane (Buttermilk Creek Watershed)  
**Staff Recommendation:** To deny the restrictive covenant amendment. Zoning and Platting Commission  
**Recommendation:** To deny the restrictive covenant amendment. Applicant: American Condominium Corporation. Agent: Jim Bennett. City Staff: Robert Heil, 974-2330

**Additional Backup  
Material**

(click to open)

[Staff Report](#)

**For More Information:**

**RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET**

**CASE:** C14-72-015(RCA) 1517 E. Anderson Ln. **ZAP DATE:** December 19, 2006

**ADDRESS:** 1517 E. Anderson Ln.

**OWNER/APPLICANT:** American Condominium Corporation

**AGENT:** Jim Bennett

**AMENDMENT REQUESTED**

1. Delete (1) (e) which prohibits the drive-through restaurants.
2. Delete (2) which requires the construction of a six-foot masonry wall roughly paralleling the north bank of Buttermilk creek along the southern boundary of the property .

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends denial of the request for amendment.

**PLANNING COMMISSION RECOMMENDATION:**

December 19, 2006: Recommended denial of the requested amendment (8-0)

**DEPARTMENT COMMENTS:**

This restrictive covenant was signed in 1972 in association with an ordinance which rezoned a larger property, from "A Residential" to "GR, General Retail". The covenant restricted several uses and called for the construction of a 6 foot high masonry fence roughly along the south boundary of the larger tract.

In the mid 1970's two portions of the larger tract were developed with apartments. As part of their construction, both include 6 foot masonry walls as called out in the covenant, although a portion of the wall along was removed in the 1990's as part of a stream bank stabilization project along Buttermilk Creek.

The covenant has been honored by all the subject tracts to date. Staff sees no reason for the covenant to be modified or amended.

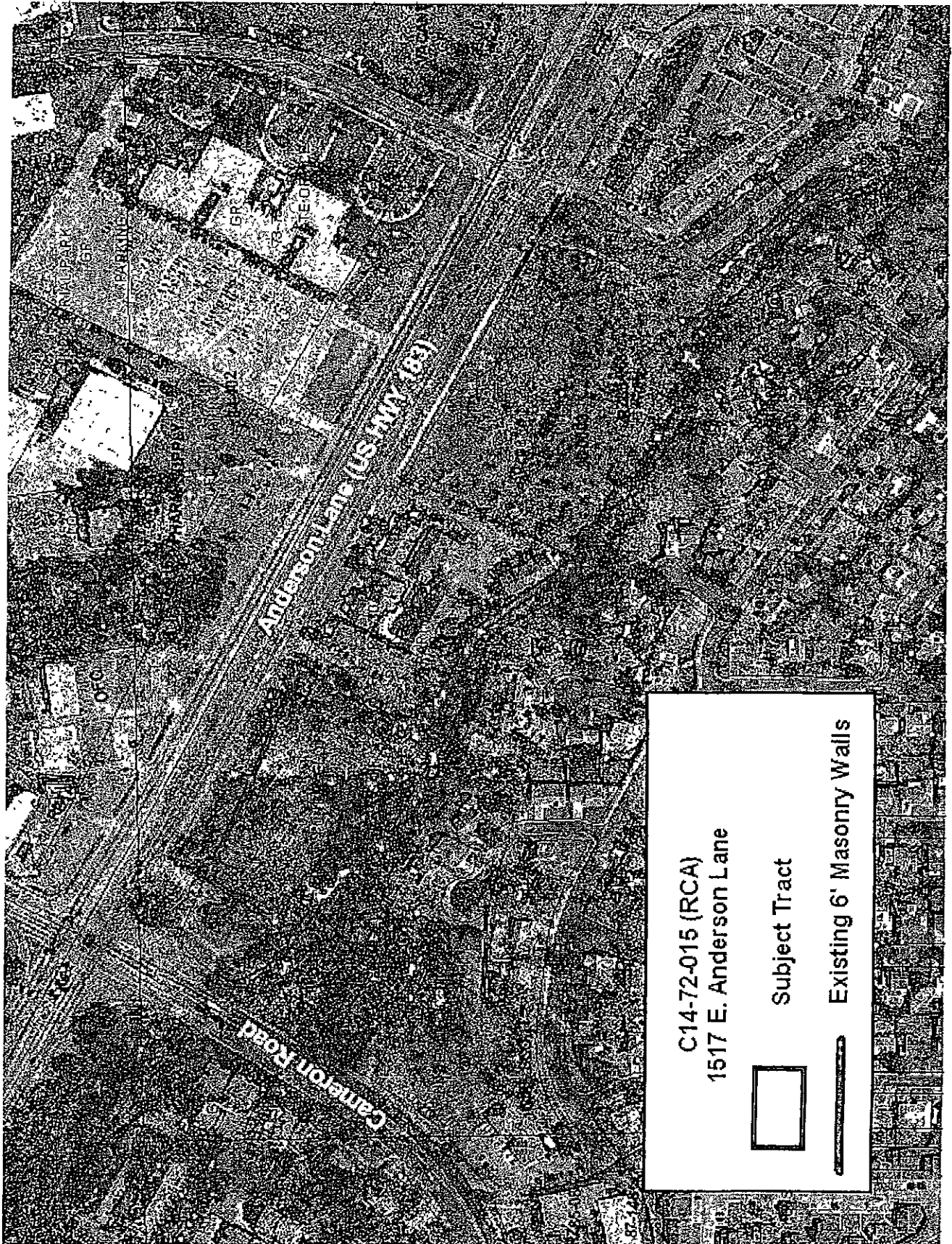
**CITY COUNCIL DATE:** 2/01/07 **ACTION:**

**ORDINANCE NUMBER:**

**CASE MANAGER:** Robert Heil

**PHONE:** 974-2330

**EMAIL:** Robert.Heil@ci.austin.tx.us



Rodney Bennett

INAT  
1517 E Anderson Ln

952

DEED RECORDS  
Travis County, Texas

61-0082

WHEREAS, John D. Byram, herein called "Byram", is the owner of 31.69 acres of land in Travis County, Texas, described as Parcel I and II on Exhibit "A" attached hereto and made a part hereof for all pertinent purposes; and

WHEREAS, Byram has heretofore applied for a zoning change so as to change the zoning thereof from "A" Residential to "GM" General Retail; and

WHEREAS, certain adjoining landowners objected to such zoning change but withdrew such objections in favor of a compromise and settlement agreement whereby Byram agreed to place certain restrictive covenants on such property;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration moving to Byram, the receipt of which is hereby acknowledged and confessed, Byram does hereby place the following covenants and restrictive covenants on the land described in Exhibit "A" attached hereto and made a part hereof for all pertinent purposes, to-wit:

(1) Such land described on Exhibit "A" shall not be used for any of the following purposes, to-wit:

- (a) Trailer courts;
- (b) Veterinary hospitals or dog kennels;
- (c) Public stables or riding academies;
- (d) Auto laundries (but not prohibiting filling stations);
- (e) Drive-in type cafes (but not prohibiting restaurants or eating places whereby all customers are served inside a building);

- Fence cannot go along boundary because the property line follows the creek

DEED RECORDS  
Travis County, Texas

4365 149

Need case #15

Principal roadway plan

- (f) ~~Byram~~-in theaters;
- (g) Truck centers;
- (h) Auto repair garages (but not prohibiting filling stations);
- (i) Dyeing plants; and
- (j) New or used car or automobile selling lots.

51-0083

(2) Prior to the commencement of construction of any building upon the tract described in Exhibit "A", Byram, his successor or other owner of such property, will cause to be erected and maintained in a reasonable manner a masonry wall six feet in height along the line described on Exhibit "B" attached hereto and made a part hereof for all pertinent purposes. Such wall may be built by using the most economical methods and materials then being used in the construction business in Austin, Texas, for building masonry walls, but such wall shall be built in a good and workmanlike manner and shall be built along the entire line described in Exhibit "B". It is further agreed that if such wall is built while Byram is still the owner of such property, he shall not be required to expend more than Ten Thousand Dollars in the actual cost of constructing said wall; provided, however, that such cost limitation shall not relieve Byram of the aforesaid obligation to build the wall along the entire line described in Exhibit "B". However, in the event Byram sells such property, or its ownership is transferred to another owner by voluntary or involuntary means, there shall be no such cost limitation applicable.

(3) All trash disposal containers or loading docks located to the rear of any building which are not otherwise shielded by the aforesaid wall shall be shielded from view along the south or southerly portion of such container or loading dock. It is the intention

51-0004

of this provision to maintain shielding so as to reasonably prohibit view of such loading docks and waste disposal containers from the lots adjoining and contiguous on the south to the property described on Exhibit "A". Such shielding may be done in any reasonable manner acceptable to the City of Austin, but in no event shall any shielding be required to extend more than twenty feet in height.

(4) Nothing herein shall be construed to prohibit Byram or other owner of such property from building buildings up to the aforesaid line described on Exhibit "B", it being understood that the said Byram or other owner shall have such right.

(5) It is agreed that the portion of the property to be zoned General Retail includes a 50-foot strip along Buttermilk Creek shown on a plat marked Exhibit "C" and attached hereto and made a part hereof for all pertinent purposes and sometimes referred to as "Green Belt". Byram agrees that no buildings of any kind or character shall be built on such 50-foot strip.

(6) The covenants herein shall be deemed covenants running with the land. If any person or persons shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate such agreement or covenant, or either to prevent him or them from so doing or to collect damages for such violation.

(7) If any part or provision of the agreement or covenant herein contained shall be declared invalid by a Judge or Court order, the same shall in nowise affect any of the other provisions

67-0085

of said agreement, and such remaining portion of the agreement shall remain in full force and effect.

(8) The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

(9) This agreement may be modified, amended, or terminated only after notice and hearing to all adjoining property owners and by joint action of both (a) a majority vote of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owner of the above described property at the time of such modification, amendment, or termination.

DATED: June 2, 1972.

John D. Byram  
JOHN D. BYRAM

THE STATE OF TEXAS )  
COUNTY OF TRAVIS )

BEFORE ME, the undersigned authority, on this day personally appeared JOHN D. BYRAM, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 14 day of JUNE, 1972.

NOTARY SEAL

Paul B. Smith  
Notary Public, Travis County, Texas

FIELD NOTES

61-0086

FIELD NOTES FOR 12.49 ACRES OF LAND OUT OF THE WILLIS  
 AVEY SURVEY NO. 91 IN THE CITY OF AUSTIN, TRAVIS COUNTY,  
 TEXAS, AND BEING A PART OF THAT CERTAIN TRACT OF LAND  
 DESCRIBED IN VOLUME 498 AT PAGE 459 OF THE DEED RECORDS  
 OF TRAVIS COUNTY, TEXAS, SAID 12.49 ACRES OF LAND BEING  
 MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS  
 FOLLOWS:

BEGINNING at a steel pin found on the south right-of-way  
 line of U. S. Highway 183, which point of beginning is the  
 northwest corner of this tract and from which point of beginning  
 a concrete right-of-way marker found at the intersection of the  
 south right-of-way line of U. S. Highway 183 and the east line  
 of Cameron Road bears N62° 13' W 115.69 feet;

THENCE, with the south right-of way line of U. S. Highway  
 183, S62° 32' E 214.28 feet to a concrete right-of-way marker  
 found; S51° 20' E 101.91 feet to a concrete right-of-way marker  
 found and S62° 28' E 1106.20 feet to a steel pin set at the north-  
 east corner of this tract;

THENCE, S27° 32' W 431.62 feet to the southeast corner of  
 this tract, which point is in the north line of Block Y, Coronado  
 Hills, Section Three, a subdivision of record in Book 48 at Page  
 60 of the Plat Records of Travis County, Texas;

THENCE, with the north line of Block Y, Coronado Hills, Section  
 Three, N65° 01' W 445.06 feet, N30° 05' W 245.47 feet, N75° 32' W  
 119.84 feet, N62° 35' W 363.10 feet, N45° 08' W 130.56 feet  
 to the northwest corner of Lot 36, and N52° 15' W 191.70 feet  
 to an iron pin set at the southwest corner of this tract;

THENCE, N32° 22' E 298.77 feet to the POINT OF BEGINNING and  
 containing 12.49 acres of land.

NOTE: The north line of Block Y, Coronado Hills, Section Three, was  
 surveyed by others.

SURVEYED BY

*E. F. Priest*

DATE

E. F. Priest, Reg. Public Surveyor

EXHIBIT "A" - Page 1

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FIELD NOTES

FIELD NOTES FOR 19.00 ACRES OF LAND OUT OF THE WILLIS  
AVERY SURVEY NO. 21 AND THE JOHN APPEGATE SURVEY, IN THE  
CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, AND BEING A PART OF  
THAT CERTAIN TRACT OF LAND DESCRIBED IN VOLUME 498 AT PAGE  
499 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 19.00  
ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES  
AND BOUNDS AS FOLLOWS:

61-0087

BEGINNING at an iron pin set on the south right-of-way line  
of U. S. Highway 183, which point of beginning is the northwest  
corner of this tract and from which point of beginning a concrete  
right-of-way marker found bears N62° 28' W 1106.20 feet;

THENCE, with the south right-of-way line of U. S. Highway  
183, S62° 28' E 692.96 feet to a concrete right-of-way marker  
found, S33° 41' E 113.92 feet to a concrete right-of-way marker  
found, and S52° 27' E 289.52 feet to a steel pin found in the  
centerline of Little Walnut Creek, which point is the northeast  
corner of this tract;

THENCE, with the centerline of Little Walnut Creek, S22° 13' E  
259.95 feet, S24° 12' E 313.37 feet, S06° 40' E 200.00 feet,  
S57° 48' W 380.00 feet, N86° 54' W 58.10 feet and N58° 56' W  
97.27 feet to a point in the centerline of another creek locally  
known as Buttermilk Creek;

THENCE, with the centerline of Buttermilk Creek, N69° 15' W  
173.70 feet, N17° 09' E 52.11 feet, N76° 28' E 80.76 feet,  
N41° 04' E 92.44 feet, N09° 07' E 249.36 feet, N84° 50' W  
70.41 feet, N79° 54' W 350.38 feet, N22° 16' W 247.30 feet  
and N51° 16' W 18.37 feet to the northeast corner of Lot 4,  
Block Y, Coronado Hills, Section Three, a subdivision of record  
in Book 48 at Page 60 of the Plat Records of Travis County, Texas;

THENCE, with the north line of Block Y, N51° 16' W 214.38  
feet, N38° 18' W 123.25 feet, N76° 24' W 174.00 feet, and N05° 01' W  
22.19 feet to the southwest corner of this tract;

EXHIBIT "A" - Page 2

4365

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FIELD NOTES  
PAGE TWO

61-0088

THENCE N27° 32' E 435.62 feet to the POINT OF BEGINNING  
and containing 19.00 acres of land.

NOTE: The centerline of Little Walnut and Buttermilk Creek, and  
the north line of Block Y, Coronado Hills, Section Three, were  
surveyed by others.

SURVEYED BY

*B. F. Priest*

DATE

*4-29-72*

B. F. Priest, Reg. Public Surveyor

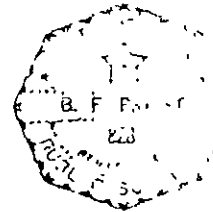


EXHIBIT "A" - Page 3

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FIELD NOTES

61-4089

Starting for reference at an iron pin set at the southwest corner of this certain tract of land described in Volume 498 at Page 469 of the Public Records of Travis County, Texas, and from which point a concrete right-of-way marker found at the intersection of the south line of U. S. Highway 183 and the east line of Cameron Road bears N 32° 22' E 298.77 feet and N 62° 10' W 115.69 feet;

THENCE N 32° 22' E. 59.44 feet to the beginning point of this line;

THENCE S 52° 11' E 110.98 feet to a wood stake found, S 54° 09' E 209.41 feet to a wood stake found, S 60° 30' E 196.33 feet to a wood stake found, S 65° 57' E 82.69 feet to a wood stake found, S 69° 32' E 138.78 feet to a wood stake found, S 43° 00' E 115.80 feet to a wood stake found, S 27° 05' E 113.52 feet to a wood stake found, S 34° 57' E. 85.20 feet to a wood stake found, S 69° 07' E 243.17 feet to a wood stake found, S 67° 07' E 155.88 feet to a wood stake found, S 71° 04' E 148.50 feet to a wood stake found, S 59° 54' E 147.08 feet to a wood stake found, S 41° 34' E 171.11 feet to a wood stake found, S 48° 42' E 105.54 feet to a wood stake found and S 37° 59' E at 56.34 feet passing a wood stake found in all a distance of 93.67 feet to an iron pin set at the termination part of this line.

EXHIBIT "B"

61-0090

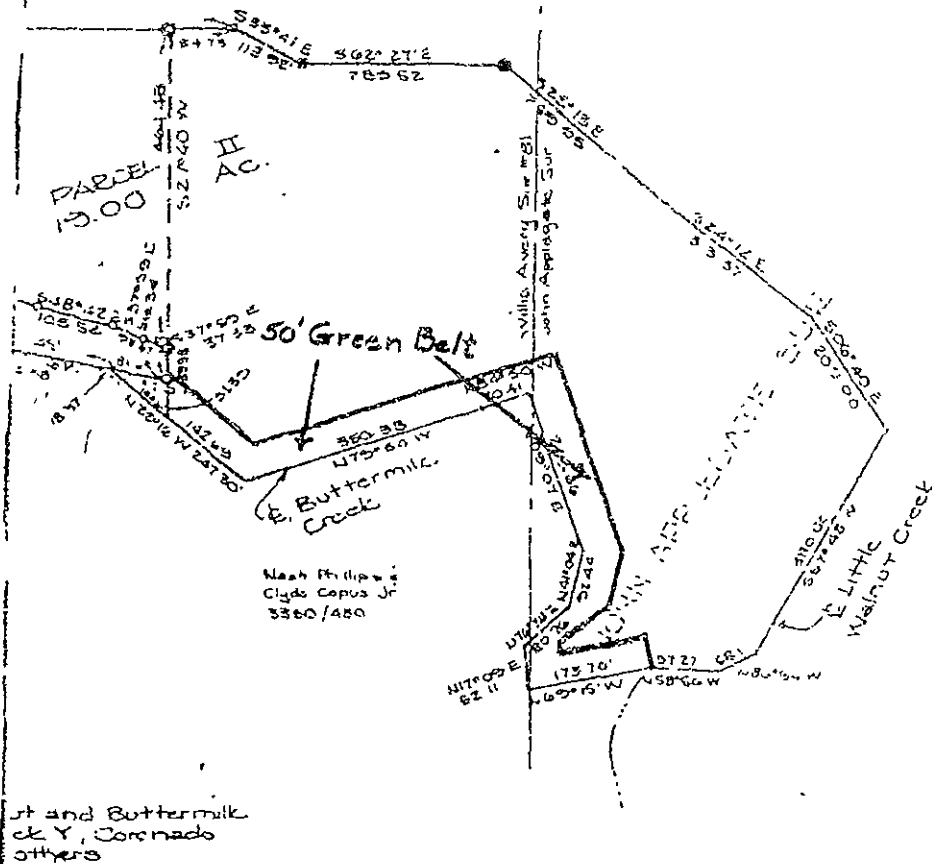


EXHIBIT "C"

FILED

61-0091

JUN 16 3 23 AM '72

*James R. Thompson*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

STATE OF TEXAS                      COUNTY OF TRAVIS  
I hereby certify that this instrument was FILED on the  
date and at the time stamped hereon by me, and was duly  
RECORDED, in the Volume and Page or the named RECORDS  
of Travis County, Texas, as Stamped hereon by me, on

JUN 16 1972



*James R. Thompson*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

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